

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14065, of the National Association for Women Deans, Administrators and Counselors, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 4101.44 to use unit 107 of the subject premises as the national office for the Association in an SP-2 District at premises 1727 Massachusetts Avenue, N.W., (Square 157, Lot 837).

HEARING DATE: November 9, 1983  
DECISION DATE: December 7, 1983

FINDINGS OF FACT:

1. The subject premises is located on the north side of Massachusetts Avenue, N.W. between 17th Street on the east and 18th Street on the west. The site is in an SP-2 District and is known as premises 1727 Massachusetts Avenue, N.W.
2. The subject site is approximately rectangular in shape. Its dimensions are 106.33 feet on the north and south sides, 138.62 feet on the west side, and 158.81 feet on the east side.
3. The site is improved with an eight-story brick apartment structure with basement. The subject structure is currently in use as a residential condominium of 142 units, known as the Winthrop Condominium. The mixture of units in the condominium includes thirty-two one-bedroom apartments and 110 efficiency apartments.
4. In the subject condominium, a ground floor dwelling unit known as unit 107 is currently vacant and is the subject of this application. The subject unit is a one bedroom apartment that contains approximately 800 square feet of space.
5. There is access to and from the subject site through Massachusetts Avenue on the south and through a public alley on the north.
6. The subject square is developed with a mixture of apartment houses, rowhouses, and office uses. The Brookings Institution is located immediately west of the subject site and the Brookings' parking lot is located on the north side of the square directly behind the Brookings facility. East

of the subject site is an office building followed by two residential structures, namely the Boston House and the Bay State apartment buildings. On the north side of the square are two additional apartment houses, the Webster House and the Avondale, and other residential buildings.

7. The southern half of the subject square fronts on Massachusetts Avenue and is zoned SP-2. The northern half of the subject square fronts on P Street and is zoned R-5-D.

8. The surrounding neighborhood is developed with a mixture of medium density residential uses, office and institutional uses. The zoning of the subject area is SP-1 to the south, east and west of the subject square. The area north of the subject square is zoned R-5-B and three blocks west of the subject site is a C-3-B District.

9. The subject structure was constructed in 1940 and was used as a residential rental property for approximately forty years. In approximately 1978, the property was purchased by Wm. Calomiris Investment Corp. In 1981, acting as agent for the Winthrop Associates, Calomiris Corp., negotiated a settlement agreement with the Winthrop House Tenants Association which allowed the property to be converted to a residential condominium provided that the existing tenants obtain long-term leases on their units.

10. On February 20, 1981, the property was offered to the public for purchase as a residential condominium. The Winthrop Associates, a D.C. Joint Venture, was the developer and Peter Calomiris was agent for the developer. As of October 13, 1983, eighty-seven of the 142 units had been sold. This represents only 61.27 percent of the 142 units. Seventy-five percent of the units must be sold in order for control of the condominium to pass to the condominium association, or two years must pass following the settlement of the first unit sold, whichever comes first. The total number of units occupied by tenants or owners is 120, leaving twenty-two vacant units. These vacant units are being marketed for residential use.

11. The application was filed in the name of the National Association for Women Deans, Administrators and Counselors, hereinafter referred to as NAWDAC, listing that organization as the owner. The property is still owned by Winthrop Associates, which authorized NAWDAC as the contract purchaser, to file the application.

12. The subject Unit 107 was formerly used as the resident manager's apartment and is now vacant. The subject unit has been marketed as a residential unit since February 20, 1981, but remains unsold. The owners are now seeking to sell Unit 107 to NAWDAC for use as office space for its national headquarters.

13. The NAWDAC is a non-profit professional organization of approximately 1,600 women and men educators. The organization is committed to strengthening educational opportunities and services for girls and women at all levels of education. Established in 1916 in New York City, NAWDAC moved its national headquarters to Washington, D.C. in 1923. Housed in various locations in the downtown Connecticut Avenue corridor, during the past twenty years the office has been located in the National Education Building at 16th and M, the La Salle Building at Connecticut and L, and currently is in the Cafritz Building at 16th and I Streets, N.W.

14. The NAWDAC office in the District of Columbia supports the work of voluntary members who are employed at educational institutions in the United States and Canada. The Association's service to and contact with members is primarily by telephone and mail. The Association's services to members include a journal, a quarterly newsletter, an annual national conference and periodic workshops, symposia and monographs for and about women in education.

15. The Association has four part time office employees including an Executive Director who works thirty-two hours per week, a Member Data Manager, a bookkeeper and a secretary, each of whom works sixteen hours per week. No more than three employees, but usually only two, are in the office at any one time. Hours of operation are from 9:00 A.M. to 5:00 P.M. four days a week, Tuesday through Friday. The office is not open on weekends or on Mondays. Between ten and fifty pieces of mail are received each day at the NAWDAC offices.

16. All employees at the current location on I Street, N.W., use public transportation and are expected to continue to do so at the proposed location. One employee comes from Chevy Chase via the N6 bus, another comes from Cleveland Park via the Metro Red Line. A third uses a Virginia commuter bus and the fourth uses Metro service from the Pentagon.

17. The staff of NAWDAC has remained at essentially the same size for twenty-five years. No increase in staff size is anticipated because the size of the membership is stable and financial resources are limited. No use is made of noisy or elaborate equipment. Office machines consist of typewriters and a copier.

18. There are few if any visitors to NAWDAC headquarters. The limited foot traffic to and from Unit 107 would pass only two units, since the suite is directly accessible from the lobby. It is anticipated that there would be less traffic to the unit than would normally be associated with a doctor's office or other professional unit. There are

parking garages in the immediate area which are available for the parking needs of NAWDAC and its visitors.

19. The NAWDAC intends to retain the residential character of the unit. No sign will be erected inside or out other than possibly a small plaque on the door. This sign would conform to condominium architectural requirements. Draperies will be added to the existing venetian blind window treatments and the reception area will be furnished as a living room to convey a residential appearance when the door is opened. No overhead lighting will be installed. The residential nature of the building was particularly attractive to NAWDAC because of the noncommercial thrust of its work. The NAWDAC will make no changes to the exterior of the building.

20. The NAWDAC seeks to purchase property in order to stabilize overhead expenses which have experienced a 100 percent rental increase over the past four years. The location has been selected for its proximity to other educational and women's organizations and public transportation access as well as its cost factor. The NAWDAC National Office Advisory Committee examined twenty-five to fifty sites in the area over a period of a year and a half, and selected the Winthrop House because it offered the ideal combination of proximity to other Dupont Circle educational associations, availability of public transportation, and a quiet environment imperative to the work of the national office. The price was an important consideration to the Association, which testified that it cannot afford expensive commercial space.

21. The Board of Zoning Adjustment has the authority to grant a special exception to establish offices for a non-profit organization in an SP-2 District pursuant to Sub-section 8207.2 and Paragraph 4101.44 of the Zoning Regulations. Sub-section 8207.2 provides that the Board is authorized to grant special exceptions if in the judgement of the Board, such special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and maps and will not tend to affect adversely the use of neighboring property.

22. Paragraph 4101.44 provides that an office for a non-profit organization may be established as a special exception in an SP-2 District provided that:

- A. The use, height, bulk and design are in harmony with existing uses and structures on neighboring property;
- B. The use will not create dangerous or other objectionable traffic conditions;

- C. The Board may require such special treatment in the way of design, screening of buildings, accessory uses, signs and other facilities as it shall deem necessary to protect the value of neighboring property.

23. The applicant argued that the proposed use is designed and intended to meet the requirements for Special Purpose office uses. The users would seek to avoid adverse impacts on surrounding or nearby properties. The proposed use is a low-density office use with little or no measurable impacts. Traffic or other movements to and from the office would be extremely limited. Employees would travel to and from the office by public transportation and there would be few if any visitors. No parking problems are expected to result from the use. No noisy equipment would be used and the number of staff would remain at four persons. Signage would be kept to a small plaque. No exterior changes would be made to the building. Security problems of unlawful entry to the subject building pre-exist the proposed office use and would not be a new problem should this application be granted.

24. The proposed use is designed and intended to be consistent with the purposes of the SP-2 District. The pattern of office usage for the NAWDAC would be similar in character to other office and institutional uses in the area and in the 1700 block of Massachusetts Avenue, N.W. The residential decor and low intensity of the proposed use is expected to make the use compatible with other residential uses in the subject building and the neighborhood.

25. The floor area ratio devoted to office use for this one unit would be well below the maximum of 3.5 permitted for office uses in the SP-2 District. Unit 107 constitutes less than one percent of the total floor area of the subject building. There are no other non-residential uses existing or proposed for units in the subject building. Only Unit 107 is proposed for office use at the present time. The condominium declaration and bylaws permit non-residential uses only on the first and second floors of the subject condominium.

26. The contract purchaser proposes to be an active owner/occupant in the Winthrop Condominium. The organization would participate in the Condominium Association and the DuPont Circle Citizens Association. The organization is familiar with the neighborhood and has contact with other professional organizations in the immediate vicinity, although none of its members live in the DuPont Circle area.

27. There were seventeen letters of support submitted to the record by owners of condominium units at the Winthrop House. Of these letters, only five mentioned that they were

from owner/occupants. The other letters were from unit owners who lived elsewhere and rented the units to tenants. The basis for the support as expressed in the letters was that the professional presence of NAWDAC would have a positive effect on the atmosphere and value of the building.

28. The Secretary of the Winthrop Condominium Association wrote a letter of support to the record. The support was based on the positive effect that the proposed use was expected to have on the atmosphere and value of the building.

29. Advisory Neighborhood Commission 2B, at the public hearing and by report dated November 1, 1983, opposed the application. The ANC was of the opinion that if the BZA allowed this office use in a residential building, the owner will be given the signal to proceed to sell his unused units to other non-residential persons. Office interlopers could destroy the residential character of the building and cause unforeseen security problems as well.

30. The ANC found that this application was in conflict with the guidelines of the SP District in Sub-section 4101.1 of the regulations. The ANC submitted that location of an office use in an all residential building neither achieves the "buffer" intention nor preserves and protects residential uses.

31. The ANC reported that the south side of the 1700 block of Massachusetts Avenue has no more remaining housing units. Office use has gained ground on the north side with the Brookings Institute and an adjacent office building it owns. The SP "buffer" is not holding up well because interpretation of the Regulations has led to great imbalance in favor of office use. If this application is granted, the ANC had little doubt that the three remaining residential buildings on the north side of Massachusetts Avenue will be eventually converted.

32. The ANC strongly advised the Board to reject this application on the further grounds that the proposed use will not be in harmony with the purpose and intent of the regulations and will tend to affect adversely the use of neighboring property.

33. A representative of the DuPont Circle Citizens Association (DCCA) testified in opposition to the application. The DCCA was of the opinion that it is vital to the Dupont Circle community that the Winthrop House remain an exclusively residential building. The DCCA cited Sub-section 8207.2 which authorizes the Board to grant special exceptions. The proposed use of a residential condominium unit for office space is not a use that the DCCA found to be in harmony with the existing uses of neighboring

property, namely residential apartments in the remainder of the same building, as required by Paragraph 4101.441. The purpose of the SP zone is to "protect areas adjacent to commercial districts which contain a mix of rowhouses, apartments, offices and institutions. The DCCA was of the opinion that the invasion of a residential building with a non-residential use will not protect this mix, but tend toward a homogenous office district and vitiate the purpose of an SP zone. A mix within a well-maintained residential building will not preserve the mix among building types. A map of the 1700 block of Massachusetts Avenue demonstrates the present predominance of office use on the block. The DCCA was concerned that the three residential buildings that remain in the 1700 block be preserved.

34. The DCCA reported that the Winthrop Condominium Association, Inc. and individual members of the Association have written in support of this application, but Lusk's D.C. Assessment Directory 1983 Edition (pp. 1359-61) shows that only eight units are listed as occupied by the owner and one of those listed owns two of those eight while another is known to live elsewhere. The DCCA argued that the condominium association is an association of investors who have knowingly invested in a residential building, not residents of the building who have a personal, day-to-day stake in the neighborhood.

35. The DCCA requested the Board to deny this application, which would put the residential use of units in the Winthrop House in competition with office use, which commands higher rents and sales prices. The DCCA concluded that there is no shortage of office space in the Dupont Circle area, and, in any case, secure and affordable housing for neighborhood residents deserves a higher priority than housing for associations, however worthy their cause.

36. A representative of the Residential Action Coalition (R.A.C.) testified in opposition to the application. The R.A.C. had concerns and questions as to the ownership of Winthrop House and the membership of the condominium association. The R.A.C. was also concerned about the amendment to the condominium bylaws permitting office uses on the first and second floors of Winthrop House. The R.A.C. representative testified that Winthrop House is a forty-one year old apartment building in first class condition. Its only problem is that it has no parking because it was constructed in 1941 when parking was not required. The R.A.C. expressed concern that there is nothing to stop employees of NAWDAC from purchasing cars at a later date.

37. Another concern of the R.A.C. was that the proposed use would not be harmonious with the existing residential uses in the Winthrop House. Finally, R.A.C. was concerned

that the sale of Unit 107 as an office would bid up the prices on other units to a price beyond the reach of residen-tial occupants. The R.A.C. noted that when Special Purpose zoning was created in 1958 there was a high percentage of residential uses in the SP Districts that were intended by the Regulations to remain in place.

38. The Winthrop House Tenants Association, some individual residents, the Bay State Tenants Association and the Webster House Condominium Association, opposed the application. A petition with forty-four signatures of residents of the Winthrop House in opposition was filed in the record. In addition to the grounds recited by the ANC, the DCCA and R.A.C., further grounds of opposition were that the settelement agreement which the Tennants' Association negotiated with the developer was for a residential condominium. No mention of mixed use was made during the 1980 negotiations. It was only at the BZA public hearing that Tenants Association members discovered that the condominium declaration and bylaws permit non-residential uses on the first and second floors of the Winthrop House. The first and second floors of the subject building have numerous vacancies, many of which are one-bedroom units. All of the occupied units on these two floors are efficien-cies. The Tenants Association argued that if the vacant units on the first and second floors of the Winthrop House were converted to office uses than an existing security problem could be exacerbated. The tenants feared that if the subject application were granted, intruders could enter the building by claiming to be going to the proposed office. There was also expressed a concern that if the application is granted, a precedent would be established.

39. The Tenants Association president further testified that the tenants were offered long term leases at the time of the condominium conversion, and were to have had first option to buy their units. The tenants were given insuffi-cient time to study the condominium documents, and many found that their units had been sold to unknown investors before the tenants had an opportunity to exercise their option to buy. Many tenants have moved out since the sales of the units began, although they had wished to stay. Many are senior citizens who received ten year leases or lifetime leases and who hope to see the building remain residential. Other tenants were given three or five year leases and would prefer to remain in their homes as long as possible.

40. The membership and organization of the Condominium Association was unknown to the Tenants Association. However, the secretary of the Condominium Association, whose signa-ture was in the record on a letter to the BZA, was known to the Tenants Association as their former property manager and an employee of Calomiris Corporation in a management capacity.



41. The Board is required by statute to give great weight to the issues and concerns of the ANC reduced to writing on which a formal recommendation has been made. In addressing the issues and concerns of the ANC, as well as the other opposition, the Board finds as follows:

- A. The applicant is seeking its relief through a special exception not a use variance. The applicant has no burden to prove that the subject unit cannot be used for residential purposes. The applicant's burden is to establish through substantial evidence that it meets the requirements of Paragraph 4101.44 under which it seeks relief. The Board for reasons discussed below in its conclusions does not find that the applicant has met said burden of proof.
- B. Many of the issues raised by the opposition do not go to the merits of the application. Many of the issues regardless of their extraneous merit, are not zoning concerns. The lack of knowledge of matters contained in the condominium documents on the part of the tenants and the question of the legality of the condominium conversion are not issues properly before the Board. If there is any relief for the tenants it is not in the authority of the BZA.
- C. The fact that owners of units in the subject structure do not occupy their units is also not a zoning issue. The fact that there is office space available elsewhere is also not an issue.
- D. While the SP District is a buffer zone, this does not imply that at this time anything but residential use must be excluded.
- E. Further concerns were raised that the employees of the applicant may, in the future, bring cars into the area and thus create parking problems for the immediate neighborhood and that the sale of Unit 107 as an office would increase the sales price of other units on the first and second floors to a price that residents could not afford. The Board finds such concerns as conjectural.
- F. As to the issue of precedent setting, the Board has consistently held that each application is judged on its individual merits. If further SP office use is proposed for other units on the first and second floors such must come before the BZA for approval. At that time each individual application will be determined.

- G. The limited nature of the office use proposed will not be a large scale intrusion into the building. The non-residential presence would have some negative effects, however, because of increase in foot travel, telephone services and deliveries.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking a special exception to use one unit of a residential condominium as offices for a non-profit organization in an SP-2 District. The granting of such a special exception requires a showing through substantial evidence that the proposed use satisfies all requirements of Paragraph 4101.44 and Sub-section 8207.2 of the D.C. Zoning Regulations.

The Board concludes that the applicant has not met its burden of proof. The proposed office use, although of low intensity, is not in harmony with the existing uses within the subject structure and structures on neighboring property. The "neighborhood" within which this proposed use is located is first and foremost the building in which it is located. The subject structure is an eight story building containing 142 units. Only twenty-two units are vacant. All units are designed for residential uses and 120 units are now so used. To introduce office use in one unit is completely out of harmony and character with the remainder of the building.

One lot removed to the east of the subject structure are two similar structures of the same height containing residential units. Neither the Boston House nor the Bay State contain office uses. These three structures are the only remaining residential buildings on the north side of Massachusetts Avenue.

The Board further concludes that the ambience of residential living as embodied in the three residential structures is violated by the intrusion of an office use. There are the increased number of business persons occupying a unit, the increased foot traffic of employees, clients and visitors, albeit minimal, extra telephones and deliveries, all of which intensify the atmosphere of a building otherwise devoted to tranquil residential living. None of these conditions are compatible. They do not stabilize the residential atmosphere nor promote a suitable environment.

For all the above reasons, the Board further concludes that the relief requested will not be in harmony with the general purpose and intent of the Zoning Regulations and will tend to affect adversely the use of the subject structure and neighboring property. The Board concludes that it has accorded to the Advisory Neighborhood Commission the

"great weight" to which it is entitled. Accordingly, it is ORDERED that the application is DENIED.

VOTE: 3-0 (Walter B. Lewis, William F. McIntosh and Carrie L. Thornhill to deny; Douglas J. Patton not voting, having recused himself; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: JUN 14 1984

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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